HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No. 262/2001
(Old No. 1635 of 1990)

Bishamber Datt and Chattar Singh ……Revisionists
Vs.
State of U.P. and Jitendra Mohan …….Respondents

Hon'ble Irshad Hussain, J.

None appear for the revisionist. Heard Sri Amit Bhatt learned A.G.A. for the State and perused the record.

This criminal revision under section 397/401 of the Code of Criminal Procedure (for short 'Code') has been preferred against the judgment and order dated 20.6.1990 passed by the Addl. Sessions Judge, Dehradun in criminal revision no. 70/1986.

The facts of the case are that proceedings under section 133 of the Code were initiated against the revisionists in regard to the street no.7, Kaulagarh, P.S. Cant, District Dehradun with the allegation that they have illegally raised construction on the public road causing nuisance and the encroachments were made was sought to be removed. The notices were sent and the learned S.D.M., Dehradun did not pass an order to continue with the proceedings after the revisionists filed written statement of their denial. The learned S.D.M. dropped the proceedings under section 138(3) of the Code in view of the fact that the abovementioned constructions are old and the revisionists were paying taxes etc. to the City Board which has power under section 211 of the Municipalities Act to initiate proceedings for removal of the encroachment. The order of the S.D.M. was passed on 6.5.1986. It was challenged by the complainant in criminal revision before the learned Sessions Judge which allowed the same by the judgment and order dated 20.6.1990.

The learned Sessions Judge of the view that even if it was an old construction the same was causing nuisance and it need to removed by passing a final order under the proceedings initiated at the instance of the complainant. The learned Sessions Judge was of the view that the proceedings could not have been dropped under section 138(2) of the Code merely on the ground that these encroachments were about 15 years old and it was in the domain of the City Board to have these

encroachments removed in exercise of the powers under section 211 of the Municipalities Act. Considering the finding the impugned order of the S.D.M. was set-aside and the matter was remanded back to him to decide the matter afresh and to pass an appropriate order according to law. Considering the legal aspects of the case that the encroachment existing on a public land used as street cause nuisance and these constructions need to be removed by making appropriate order, the present revision lack merit and is liable to be dismissed. The S.D.M., Haridwar is directed to decide the petition according to law in the light of the observation made by the learned Sessions Judge in his judgment and order dated 20.6.1990.

The petition is dismissed. Stay order dated 5.10.1990 is vacated.

(Irshad Hussain, J.)

Date 27.4.2004
Rawat.